

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

**SUNQUEST PROPERTIES, INC. AND
COMPASS POINTE APARTMENTS PARTNERSHIP**

PLAINTIFFS

V.

CIVIL ACTION NO.1:08CV692 LTS-RHW

**NATIONWIDE PROPERTY AND CASUALTY
INSURANCE COMPANY AND JOHN DOES 1-5**

DEFENDANTS

MEMORANDUM OPINION AND ORDER

The Court has before it seven motions that are in many respects similar to the motions I ruled upon in *Sunquest Properties, Inc. v. Nationwide Property and Casualty Insurance Company*, Civil Action No. 1:08CV687 LTS-RHW. (*Sunquest I*) I intend to make the same rulings here, based on the same considerations, findings of fact, and conclusions of law.

Sunquest Properties, Inc.'s (Sunquest) motion [92] and Nationwide Property and Casualty Insurance Company's (Nationwide) cross-motion [110] request that I name an Umpire to participate in the appraisal of the total storm damage to the insured property. I will name an Umpire in accordance with my prior order [244] in *Sunquest I*. I will appoint the same Umpire to act in this case, and I will charge him with the same duty, i.e. to participate in the appraisal process and, in those instances where the parties' appraisers cannot agree on the issue of total damage, to resolve the issue of the total damage, from all causes, sustained by the insured property during Hurricane Katrina.

Nationwide's motions [170] [217] seeking to disqualify Lewis O'Leary (O'Leary) from further participation in this action as an appraiser and as an expert witness will be denied for the same reasons, and upon the same terms set forth in my prior opinion [253] and order [254] dealing with the issue of O'Leary's qualifications.

Nationwide's motion [216] to strike the report and testimony of Plaintiffs' expert, John Myers, will be granted for the same reasons set forth in my prior opinion [253] and order [254] dealing with the admissibility of his testimony.

Nationwide's motion [219] for summary judgment will be denied because there are genuine issues of material fact that are inappropriate for summary adjudication.

Plaintiffs' motion [181] to enforce my order requiring appraisal is moot.

Accordingly, it is

ORDERED

That Plaintiffs' motion [92] and Defendant's cross-motion [110] to appoint an Umpire to participate in the appraisal of the total loss (from all causes) sustained by the insured property during Hurricane Katrina is hereby **GRANTED**; and

That John A. Voelpel, III, of Voelpel Claims Service, Inc., is hereby appointed the Umpire for this appraisal. Mr. Voelpel's customary fee of \$250.00 per hour portal to portal plus travel expenses (mileage at the rate approved for federal employees, airfare, hotel expenses, and meals when appropriate) is hereby **ACCEPTED** and **APPROVED**; and

That the appraisal of the total loss (from all causes) sustained by the insured property during Hurricane Katrina shall be completed and the written findings of the appraisal signed by the appraisers and the umpire shall be filed with the Court in this action within sixty days of the date of this order.

Nationwide's motions [170] [217] seeking to disqualify Lewis O'Leary (O'Leary) from further participation in this action as an appraiser and as an expert witness are hereby **DENIED** for the same reasons, and upon the same terms, set forth in my prior opinion [253] and order [254] in *Sunquest I* dealing with the issue of O'Leary's qualifications.

Nationwide's motion [216] to strike the report and testimony of Plaintiffs' expert, John Myers, is hereby **GRANTED**, and Plaintiffs will not be allowed to call John Myers as an expert witness.

Nationwide's motion [219] for summary judgment is **DENIED**.

Plaintiffs' motion [181] to enforce my order requiring appraisal is **MOOT**.

SO ORDERED this 8th day of March, 2010.

s/ L. T. Senter, Jr.
L. T. SENTER, JR.
SENIOR JUDGE